

03/30/01

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Paper No. 9  
GDH/gdh

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Transit Audio Technologies, Inc.

Serial No. 75/534,346

Benita J. Rohm of Rohm & Monsanto, P.L.C. for Transit Audio Technologies, Inc.

M. Catherine Faint, Trademark Examining Attorney, Law Office 103 (Michael A. Szoke, Acting Managing Attorney).

Before Quinn, Hohein and Bottorff, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

Transit Audio Technologies, Inc. has filed an application to register the mark "VOCAL BUS" for "software, namely[,] software for accessing text, .TXT, or voice, .WAV, files in response to indicia of location and providing audio and/or visual output to a human in a selectable language and speech font for use in conjunction with an automatic announcement and position locator system for a vehicle based on a global positioning system."<sup>1</sup>

<sup>1</sup> Ser. No. 75/534,346, filed on August 11, 1998, which is based upon an allegation of a bona fide intention to use the mark in commerce.

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that, when used in connection with applicant's goods, the term "VOCAL BUS" is merely descriptive of them.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We reverse the refusal to register.

By way of background, applicant notes in its appeal brief that its software is for use in conjunction with an automatic announcement and position locator system which it has developed for use with public transportation vehicles. In particular, applicant explains that:

Applicant's automatic announcement and position locator system, incorporating the VOCAL BUS software, is, in the present prototypical models, being marketed to transit authorities and/or the manufacturers of public transportation vehicles, such as buses, to comply with the Americans with Disabilities Act (ADA). The system in which the VOCAL BUS software is employed serves as a means of communication between the driver, or the driver's main office or terminal, and the passengers. Neither the system, nor the VOCAL BUS software, are marketed directly to the passengers of public transportation who hear/see the communication.

Applicant, relying upon definitions from Webster's New World Dictionary & Thesaurus (1996),<sup>2</sup> argues that while the

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<sup>2</sup> Although, as the Examining Attorney points out in her brief, applicant has not previously made such definitions of record, the Examining Attorney has discussed them as if they were properly of record and it is settled that judicial notice may be taken of dictionary definitions. See, e.g., *Hancock v. American Steel & Wire Co. of New Jersey*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953) and *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ

common meanings of the word "vocal" include "uttered or produced by the voice," "tending to express oneself often or freely" and "relating to, or performed by singing," applicant also observes that "the word 'voice' is generally interpreted as 'sound made through the mouth, especially, by human beings." In light thereof, applicant contends that "the word 'vocal' is not commonly associated with sounds emanating from ... inanimate objects, such as a vehicle." Thus, and while applicant admits that "[t]he common meaning of the word 'bus' is a 'large motor vehicle for carrying many passengers along a regular route,'" applicant asserts that the term "VOCAL BUS" is not merely descriptive of its software because it does not "immediately convey to the purchaser the nature of the goods, such as a vehicle *per se*, or more particularly a vehicle, such as a bus, that talks or sings." Applicant insists, instead, that "[t]he effect of coupling verbal communications to inanimate objects is orchestrated by other equipment, such as audio equipment, and at most, the term VOCAL BUS for the underlying equipment that makes a vehicle appear to 'communicate' with passengers is suggestive of the underlying equipment," including applicant's software.

The Examining Attorney, on the other hand, maintains that applicant's software "is used to make ... [transit] vehicles into 'talking buses'" in that "[t]he software is part of a system that uses a global positioning system to announce the location of the bus as it passes significant intervals such as the corner of

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505 (Fed. Cir. 1983). The definitions have accordingly been considered.

14<sup>th</sup> Street and Constitution Avenue."<sup>3</sup> According to the Examining Attorney, "[t]he immediate and direct impression of the mark 'VOCAL BUS' for software sold to bus manufacturers and transit authorities is that it makes a bus talk."

As to applicant's argument that the word "voice" is not typically associated with sounds emanating from inanimate objects such as transit vehicles, the Examining Attorney, citing the definition which she made of record from The American Heritage Dictionary of the English Language (3rd ed. 1992), points out that "vocal" is defined as meaning, inter alia, "3. Having a voice; capable of emitting sound or speech." In view thereof, the Examining Attorney contends that:

Applicant's identification of goods describes the software as "providing audio and/or visual output to a human in a selectable language and speech font." This means that the software synthesizes location data and translates it into sounds that are recognized by the average person, including a bus manufacturer, as emitting speech. In other words it gives the bus a voice. It is not the literal meaning that controls, but rather the perception of the purchaser as to the mark in the context of the goods with which

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<sup>3</sup> In her brief, the Examining Attorney again notes that she has dropped the contention in her initial refusal that the term "VOCAL BUS" merely describes goods which "are software that provides a pathway between computer files and audio or video output." Such refusal was based on the definition of record from The Computer Glossary (8th ed. 1998) at 43, which defines "bus" as follows:

A common pathway, or channel, between multiple devices. .... A bus is always designed to connect multiple devices, whereas channels such as the serial and parallel ports are used to connect only one. Buses are generally hardware, although software can be designed and linked via a so called "software bus."

The term was coined after a real bus since a bus stops at all bus stops en route. In an electronic bus, the signals go to all stations connected to it. ....

it is used. *In re Wink Corp.*, 218 U.S.P.Q. 739, 741 (TTAB 1983).

The applicant has described the average purchaser as a bus manufacturer or public transit authority. The purchaser is likely to believe that "VOCAL BUS" when used with software for providing audio output in a selectable language and speech font in vehicles describes software for use in giving buses a voice or causing them to emit a sound very much like speech. Thus the mark immediately identifies the function of the software and is merely descriptive in the context of the goods.

In addition, the Examining Attorney insists that the combination of the individually descriptive words "vocal" and "bus" into the term "VOCAL BUS" does not impart a bizarre or incongruous meaning, when used in connection with applicant's software, and that no imagination is required to understand the significance of such term in relation to such goods. The term "VOCAL BUS," the Examining Attorney urges, therefore "remains merely descriptive" of the nature or function of applicant's goods. In this regard, the Examining Attorney insists that (footnote omitted):

It has been common place for many years for software to cause various inanimate objects to "talk." Not that the objects have an independent thought process, but rather that they emit sounds very like human speech. The average purchaser of software for use in buses that is named VOCAL BUS is likely to understand that the software is used to make buses emit a sound like human speech. Thus the mark immediately names the purpose or function of the software and is not at all incongruous in relation to the goods.

Applicant's mark can be distinguished from those that are considered incongruous, such as [applicant's citation to the mark] SNO-RAKE [in *In re Shutts*, 217 U.S.P.Q. 363

(TTAB 1983),] because while buses may not actually carry on conversation, software is commonly used to make vehicles, such as cars and buses, indeed many inanimate objects, emit sound or speech. Thus there is nothing incongruous about VOCAL BUS for software used for this purpose.

It is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys information concerning any significant ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987) and In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. See In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). Thus, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

However, a mark is suggestive if, when the goods or services are encountered under the mark, a multistage reasoning process, or the utilization of imagination, thought or perception, is required in order to determine what attributes of the goods or services the mark indicates. See, e.g., In re Abcor Development Corp., supra at 218, and In re Mayer-Beaton Corp., 223 USPQ 1347, 1349 (TTAB 1984). As has often been stated, there is a thin line of demarcation between a suggestive mark and a merely descriptive one, with the determination of which category a mark falls into frequently being a difficult matter involving a good measure of subjective judgment. See, e.g., In re Atavio, 25 USPQ2d 1361 (TTAB 1992) and In re TMS Corp. of the Americas, 200 USPQ 57, 58 (TTAB 1978). The distinction, furthermore, is often made on an intuitive basis rather than as a result of precisely logical analysis susceptible of articulation. See In re George Weston Ltd., 228 USPQ 57, 58 (TTAB 1985).

Although perhaps a close question, in the present case we are constrained to agree with applicant that the term "VOCAL BUS" is suggestive rather than merely descriptive of its goods. While, in reaching this decision, we have taken judicial notice, in addition to the definitions previously mentioned, that The Random House Dictionary of the English Language (2d ed. 1987) at 2129 defines "vocal" as an adjective meaning, among other things, "1. of, pertaining to, or uttered with the voice: *the vocal mechanism; vocal criticism* .... 3. having a voice: *A dog is a vocal, but not a verbal being.* 4. giving forth sound with or as

with a voice,"<sup>4</sup> it appears that neither a transportation vehicle, such as a bus, nor the software utilized in connection with applicant's automatic announcement and position locator system, is vocal. Instead, it is the automatic announcement and position locator system, of which applicant's software is concededly an integral part, which determines and announces, by audio and/or visual means, the location of a bus based upon input from a global positioning system.

Thus, while applicant's software and its associated automatic announcement and position locator system may be said to give a "voice" to a bus or other vehicle, the term "VOCAL BUS" does not immediately, and without conjecture or speculation, indicate the purpose or function of applicant's software or forthwith convey, with the requisite particularity, a significant feature or other aspect of the goods. Rather, at least a modicum of imagination or reflection, if not a multi-stage reasoning process, is necessary in order for purchasers and prospective customers of applicant to comprehend that its "VOCAL BUS" software is a product which serves, in conjunction with an automatic announcement and position locator system, to vocalize the streets or neighborhoods through which a bus passes along its particular route or course of travel. Plainly, computer software, much less a transit vehicle such as a bus, is not typically considered or thought of as an item of vocal equipment,

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<sup>4</sup> We also judicially notice that the same dictionary at 2129 defines "voice" in relevant part as a noun connoting "1. The sound or sounds uttered through the mouth of living creatures, esp. of human beings in speaking, shouting, singing, etc."



such as a microphone, amplifier or loudspeaker. The term "VOCAL BUS," furthermore, contains an element of incongruity since, as applicant persuasively points out, an inanimate object like a bus is not usually regarded as being "vocal" in the sense of having a voice or being capable of emitting sound or speech.

The Examining Attorney, moreover, has not offered any evidence to show that the purchasing public for applicant's software, even though knowledgeable and sophisticated as to ADA requirements for public transportation vehicles, would directly perceive or immediately understand the mark "VOCAL BUS" as describing software which, inter alia, accesses voice files in response to indicia from a global positioning system regarding the location of a bus and provides, in turn, audio output as to the location of the bus. To say that such mark "gives a bus a voice," that is, a vocal sound, as the Examining Attorney maintains, does not immediately tell customers anything which is actually significant about applicant's software; instead, what is meaningful is the location or position information which the software enables the automatic announcement and position locator system to provide to passengers.

Accordingly, we find that the term "VOCAL BUS" is, at best, suggestive of the end result of the use of applicant's software rather than merely descriptive of its product. Cf. In re Aid Laboratories, Inc., 221 USPQ 1215, 1216 (TTAB 1983) [term "PEST PRUF" for animal shampoo with insecticide and deodorizing properties held "merely suggestive of a possible end result of

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the use thereof"]; In re Frank J. Curran Co., 189 USPQ 560 (TTAB 1975) [designation "CLOTHES FRESH" for clothes and shoe spray deodorant is "suggestive of an expected end result of the use of ... product ... but is not, ... merely descriptive of the purpose or function of applicant's goods"]; and In re C. J. Webb, Inc., 182 USPQ 63, 64 [term "BRAKLEEN" for a chemical composition for cleaning and degreasing automotive brake parts "is suggestive of a desired result of a brake cleaner"]. However, to the extent that there may be any doubt as to our conclusion, we resolve such doubt, in accordance with the Board's practice, in favor of the publication of applicant's mark for opposition. See, e.g., In re Aid Laboratories, Incorporated, supra; In re Conductive Systems, Inc., 220 USPQ 84, 86 (TTAB 1983); In re Morton-Norwich Products, Inc., 209 USPQ 791 (TTAB 1981); and In re Gourmet Bakers, Inc., 173 USPQ 565 (TTAB 1972).

**Decision:** The refusal under Section 2(e)(1) is reversed.

Bottorff, Administrative Trademark Judge, dissenting:

I disagree with the majority's holding that VOCAL BUS is not merely descriptive, but rather suggestive, of the applicant's goods. I find that the mark directly and immediately describes a significant purpose and function of applicant's software, i.e., that it enables a bus to provide information, in a vocal format, to its passengers. In short, the software enables the bus to vocalize.

The majority contends, *supra* at page 9, that

[t]o say that such mark "gives a bus a voice," that is, a vocal sound, as the Examining Attorney maintains, does not immediately tell customers anything which is actually significant about applicant's software; instead, what is meaningful is the location or position information which the software enables the automatic announcement and position locator system to provide to passengers.

I disagree. Clearly, a significant feature of applicant's software is the subject matter of the information it enables the bus to impart to its passengers, i.e., information as to the location of the bus. Equally significant, however, is the manner in which applicant's software allows the bus to impart that information to passengers, i.e., vocally. VOCAL BUS immediately describes this significant feature of applicant's software, and it therefore is merely descriptive of the software. It is not necessary that the mark also describe all other significant features of the software. *In re Bright-Crest, Ltd., supra.*

Finally, I cannot agree with the majority's finding, *supra* at pages 8-9, that applicant's mark is not merely descriptive because "computer software, much less a transit vehicle such as a bus, is not typically considered or thought of as an item of vocal equipment, such as a microphone, amplifier or loudspeaker," or its related finding, *supra* at page 9, that the mark "contains an element of incongruity since ... an inanimate object like a bus is not usually regarded as being 'vocal' in the sense of having a voice or being capable of emitting sound or speech." What the majority perceives to be an incongruity in the mark is more likely the apparent novelty of the product itself and its underlying technology. The fact that buses have heretofore not been known to "talk" does not make VOCAL BUS incongruous as applied to a bus which, in fact, "talks," i.e., provides information in vocal form to its passengers.

For these reasons, I would affirm the Trademark Examining Attorney's mere descriptiveness refusal, and accordingly I dissent.